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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,249	06/28/2002	Kenichi Tabata	50069-110	1960
20277 7590 08/22/2007 MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096			EXAMINER REICHLE, KARIN M	
			ART UNIT 3761	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/030,249

Applicant(s)

TABATA ET AL.

Examiner

Karin M. Reichle

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5-24-07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-28,32,33,36-39 and 41-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-28,32,33,36-39 and 41-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2004 and 26 October 2004 is/are: a) ☒ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5-24-07 has been entered.

### ***Response to Amendment***

2. Applicant's response is considered to be the claims, remarks and clean and marked up specifications filed 5-24-07, the annotated and replacement sheets of Figure 4 filed 10-26-04, and the annotated and replacement Figures filed 5-18-04.

3. The substitute specification filed 5-24-07 has been entered. It is noted that all the amendments made in the marked-up copy of the specification still did not comply with 37 CFR 1.121, e.g. the new title was not shown underlined.

### ***Specification***

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

***Drawings***

5. The proposed drawing changes were received on 5-18-04 and 10-26-04. These drawing changes are approved by the Examiner. However, see the following discussion.

6. The drawings are objected to because the Figures are still replete with informalities. *supra*. For example, a line from each numeral to the structure it denotes should be set forth, e.g. no numerals separated by commas as seen in Figures 12 and 13. The descriptions of the Figures in paragraphs 60-87 and the Figures should be consistent, e.g. the views in Figures 26A and B and the description thereof in paragraph 85 are inconsistent. In Figure 1, what is the structure at the end of the line from numeral 3? Also outlines of structure underlying other structure and lines from numerals denoting such structures should be dashed, e.g. the line from 101 in Figure 12 and 100 in Figure 18 should be dashed. Structure which is the same in various should be shown consistently, e.g. see the fixing/adhesive shown by asterisks between the baseline BL and the absorbent 3 in Figure 2A and then see Figure 2B which does not show such. The Figures should be consistent with the textual description, e.g. see the description in paragraph 109, i.e. the embodiment of Figure 4 is textually described as differing from the embodiment of Figures 1-3 due to the presence of member 5C yet a member 5C is shown in Figures 1-3. For another example, compare the textual description of the sheet 4 in paragraph 118, first sentence with the sheet 4 in Figures 6A and B. For a last example, where is ZW in Figure 27 as described in paragraph 174? It should be noted that these examples are merely illustrative. The Figures should be carefully reviewed and revised, as necessary, to overcome all the informalities therein. Applicants are thanked in advance for their cooperation in placing the drawings in proper form.

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A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Description*

7. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: paragraphs 2-4.

8. The disclosure is still objected to because of the following informalities: The description of 5-24-07 is still replete with informalities. For example: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims should be commensurate in scope, see MPEP 608.01, i.e. where is the invention of paragraphs 11-59 commensurately claimed in the claims? 2) The description of the Figures and the Figures should be consistent, e.g. see discussion in paragraph 6 supra. For another example, where is Figure 6 as described in paragraph 115? 3) The textual description should be consistent throughout the application, e.g. in paragraphs 138 and 139 the overall sheet, each occurrence, should only be described as "Y", i.e. not "X" also. For another example, in paragraph 145, line 1 what should "4" be? --14--? The specification should be carefully reviewed and revised, as necessary, to overcome the informalities therein. Applicants are thanked in advance for their cooperation in placing the description in proper form.

Appropriate correction is required.

### ***Claim Objections***

9. Claims 26-28, 32-33, 36-39 and 41-48 are objected to because of the following informalities: the claims are replete with informalities. For example: In claim 26, on lines 7 and 23-24, “stands” should be --extends--. These remarks also apply to similar language in claims 27, 32, 36, 39, and 45. In claim 26, line 11, “contact” should be --contacting--. In claim 32, lines 18-19 and 26, first occurrence, and line 21, first and last occurrences, “the” should be --a-- or --an--, as appropriate. Additionally in claim 36, line 8 appears to missing a word or words. On line 6 of claim 36, “one or more” should be --at least one-- and on line 2 of claim 47, after “wherein”, --the-- should be inserted. In claim 42, line 7, “the stretching stress” should be --a stretching stress--. In claim 44, line 3 is now redundant, see amendments to claim 39. In claim 48, line 2 appears to be missing a word or word and “absorbed core” should be --the absorbent core--. It should be noted that these examples are illustrative of the informalities in claims 26-28, 32-33, 36-39 and 41-48. The claims should be carefully reviewed and revised, as necessary. Applicants are thanked in advance for their cooperation in placing the claims in proper form. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

10. Claims 26-28, 32-33, 36-38 and 47-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In regard to claim 26, lines 10-11, the description of the folding portion on lines 10-11, i.e. “between the standing portion and the contacting portion”, is inconsistent with that on line 12, i.e. “at which the contact portion is folded”, (emphasis added). The description on lines 15-21 of the stretching members both as to number and location is unclear/inconsistent, i.e. how many members are there at a minimum? At least two members? At least those two members and at least two further members, i.e. at least a total of four members? At least two members, at least two further members and at least a still further member, i.e. at least a total of five members? Where are such positioned/located? In the vicinity of the distal end but spaced from each other or extending and spaced between the folding portion and distal end? In the vicinity of the proximal end and spaced from each other or extending and spaced between the base line and folding portion? Or also in the vicinity of the proximal end and spaced from each other or also extending and spaced between the base line and folding portion? In the vicinity of the folding portion or also in the vicinity of the folding portion? A clear consistent description of the folding portion, the number of stretching members and location of each of these stretching members of the free portion should be set forth. This also applies to similar language in claim 27. In claim 32, a positive structural antecedent basis for “said stretching member” on lines 14 and 16, i.e. one member, should be set forth. It should be noted that on line 9 of claim 32 it is not claimed that only one member is arranged in each vicinity. In claim 36, a positive structural antecedent basis for “the standing cuffs” (emphasis added) should be set forth. It should be noted that the claim requires only a minimum of one cuff on lines 3-5.

***Claim Language Interpretation***

11. None of the claim terminology has been specifically defined in the specification. Therefore, such terminology is given its common meaning, i.e. dictionary definition. Due to the lack of clarity discussed supra, both claims 26-27 will be interpreted to include a folding portion between the standing and contacting portions. Due to the lack of clarity discussed supra as well as the terminology “in the vicinity”, i.e. absent claiming of specific distances, such terminology is considered relative, lines 15-21 of claim 26 and similar language in claim 27 will be interpreted as requiring at a minimum at least two stretching members in spaced arrangement on the contacting portion between the folding portion and the distal edge, at least two further stretching members in spaced arrangement on the standing portion between the base line and the folding portion and at least one still further stretching member arranged on the free portion, i.e. includes the contacting portion, standing portion or folding portion, “in the vicinity” of the folding portion. See also the discussion of the scope of claim language in the prior art rejections infra.

***Claim Rejections - 35 USC § 102***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 26-28, 37-38 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al, ‘121.

See the Claim Language Interpretation section supra and ‘121 at the Figures, especially Figure 1, elements 84, 77, 76, 102, 62, 64 and 66, Figure 3, the number of dashed lines



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representing elastic members in the Figures and the number of elastic members shown in cross sections of such Figures, col. 4, lines 6-7 and 10-12, col. 9, lines 13-34, col. 10, lines 6-22, and col. 13, line 57-col. 14, line 4.

Claim 26: The disposable absorbent article is 20 having an absorbent structure comprising an absorbent core 44 between liquid pervious sheet 38 and liquid impervious sheet 42, a side flap laterally extending from a side edge of the core, i.e. at least a portion of liquid pervious sheet 38 and liquid impervious sheet 42 below 62 in Figure 3, at least one standing cuff, the portion of 102 between 66 and 80/84 or between 66 and 64 as shown in Figure 1, which has a free portion, between, e.g., 66 and 80/84 or 66 and 64, a base line, e.g., adjacent 80/84 or 64 (It should be noted that the base line is not required to be discrete from the side flap), a standing portion from, e.g., adjacent 80/84 or 64 and a first lower C-fold to adjacent the second upper C-fold in Figure 3, and a contacting portion from the second C-fold to the distal edge 66, a folding portion, i.e. the second C-fold, and stretching members, see 77, 76 and locations of such in Figure 1 and compare such locations with like locations in Figure 3 which shows an alternative folding pattern for the article of Figure 1.

With regard to lines 15-21 as now amended, see the Claim Language Interpretation section supra and the portions of '121 cited supra, i.e. the double dashed lines 76 adjacent edge 66 and the double dashed lines 77 and the location of the latter with regard cuff 102 and similar locations of 102 in Figure 3 which show an alternative folding pattern for the article of Figure 1. Also, note col. 9, lines 21-22 and col. 10, lines 12-13 as well as comparable double dashed lines in other Figures and the number of members designated by such, i.e. each dashed line represents an elastic member, or, in other words 76 and 77 in Figure 1 each represent two elastic members

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and the description of members 77 associated with the distal edge, i.e. “at least one”, e.g. three. Therefore ‘121 teaches a minimum of at least two stretching members in spaced arrangement on the contacting portion between the folding portion and the distal edge, at least two further stretching members in spaced arrangement on the standing portion between the base line and the folding portion and at least one still further stretching member arranged on the free portion, e.g. the contacting portion, i.e. adjacent the distal edge 66 the article can include, e.g., three spaced stretching members, “in the vicinity” of the folding portion, i.e. the one of such three members closest to the folding portion.

With regard to the deformation of the side flap, i.e. see last two lines of claims 26-27, the diaper, i.e. the side flap, is at least longitudinally curved or deformed during use due to the contraction of the elastic members and the ends of the cuffs being attached to the remainder of the diaper.

With regard to lines 23-25 as now amended see, e.g., col. 9, lines 37-39 and col. 10, lines 6-9 (Note that “stand up” as defined by the dictionary is “erect; upright” and “upright” is defined as “In a vertical position, direction or stance”) and the last paragraph of col. 10. Therefore it is the Examiner’s first position that ‘121 at most explicitly discloses a standing portion as claimed in lines 23-25. Alternatively, i.e. the Examiner’s second position, ‘121 at least teaches all the claimed structure and that the cuffs stand up as discussed supra. Therefore there is sufficient factual evidence for one to conclude that such same structure inherently includes the same capability, function or property as claimed of such structure, i.e. the capability, function or property of lines 23-25, see MPEP 2112.01. It is noted that such lines 23-25 do not set forth

what structure the standing portion is vertical with regard to, i.e. as claimed just has to be vertical to something. Note also Figure 2B of the instant application.

Claim 27: See discussion of claim 26 supra. Additionally see the standing portion discussed supra with regard to the surface of the article including sheet 38.

Claim 28: See, e.g., col. 13, line 57-col. 14, line 4 and Figures 1 and 3. It is noted that claim 28 does not require direct fixation.

Claims 37-38: See discussion of claim 26, i.e. attention is invited to, e.g., col. 10, lines 15-17 and elements 80/84 in Figure 1, i.e. a gasketing, i.e. plane gathering, cuff may, i.e. also infers “may not”, be provided outboard of the standing cuff.

Claim 48: See discussion of claims 26-27 and Figures, e.g. if the embodiment of Figure 1, were double folded such as described in Figure 3, at least the middle portion of the second fold, i.e. the folding portion extends outward of the side edge of the absorbent core in the crotch region thereof, i.e. outside an area over the absorbent core. It is noted that claim 48 does not require the entire folding portion be located outside of the entire area over the absorbent core.

14. Claims 36, 39, 41 and 43-47 are rejected under 35 U.S.C. 102(e) as being anticipated by St. Louis et al ‘433.

See Claim Language Interpretation section supra and ‘433 at the Figures, especially Figure 6, and, e.g., col. 4, line 60-col. 5, line 18, col. 10, lines 11-63, col. 13, lines 7-20, col. 20, lines 53-56.

Claim 36: The disposable absorbent article 10 includes an absorbent structure which is at least 46 or 48, a side flap 20, a standing cuff, at least 144, see, e.g., Figure 6, a base line adjacent 172, and stretching members 68, 68a, see col. 22, lines 7- 46, especially 10-14 and 28-31, e.g. at

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least one first stretching member. The cuff includes a two-layer sheet 176 and a water proof sheet 174. Additionally, as seen in Figure 1, the base line, i.e. adjacent 172, extends along a longitudinal end of the absorbent structure, e.g. 48, see col. 22, lines 48-51, the sentence bridging cols. 22-23, and col. 25, lines 52-54, and a second stretching member, e.g. at least one of members 110 and/or 118, see col. 10, lines 7-15 and col. 12, lines 50-58, i.e. an elastic member, e.g. at least one of 110 and/or 118 is provided between the base line and centerline and gathers the article adjacent the longitudinal ends thereof, i.e. deforms the longitudinal end of an absorbent structure, e.g. at least some portion of 12 and/or 14. It is noted that the second member is not required to extend only between the base line and centerline nor is the specific structure of the absorbent structure which is deformed set forth. With regard to the added last section of claim 36, '122 teaches stretching members, e.g. at least two of 110 as shown in Figure 3, for lifting, e.g. lifts the portion 84, see discussion infra, being longitudinally fixed, see, e.g., Figure 3, along opposite sides of the absorbent structure, see Figure 1, elements 110 with respect to sides of 46 and 48 and the paragraph bridging cols. 12-13, and thereby '525 (Laux '675) at, e.g., col. 13, lines 57-63, and laterally inboard with respect to the base lines of cuffs, see 110 with respect 172 and col. 14, lines 12-16 and col. 22, line 48-51. It is noted that the stretching members are not required to have their longitudinal axis longitudinally fixed, be so fixed only along the sides, and/or only laterally inboard of the base lines. It is further noted that what the members lift has not been set forth.

Claim 47: See discussion of claim 36, i.e. at least one of the first stretching members is arranged along the distal edge, e.g. 68, and another is arranged between the base line and centerline, e.g. 68a and col. 22, lines 28-31.

Claim 45: See discussion of claim 36 and note that the claim does not require the cuff be oriented along a transverse edge of the structure, i.e. the structure 142 can contact the wearer's waist at the waist regions 12 and 14, and the base line 172 extends along an edge of the absorbent structure in a direction perpendicular to a longitudinal direction of the absorbent structure, see extent of 172 in Figure 6. It is noted that claim 45 does not require a base line which has a longitudinal direction extend along the edge in a direction in which such longitudinal direction is perpendicular to the longitudinal direction of the absorbent structure.

Claim 46: See discussion of claims supra. Additionally, see col. 10, lines 26-50, esp. line 40, i.e. provide a "gradient" ("gradient as defined by the dictionary is "a rate of inclination, slope, an ascending or descending part, incline), i.e. the individual strands may have an ascending or descending gradient of tension/force between the base line and the distal edge. It is the Examiner's first position that the '433 reference therefore explicitly teaches the contraction force of a stretching member between the base line and longitudinal centerline being stronger than that of a stretching member at the distal edge. In any case, i.e. the Examiner's second position, at the very least '433 teaches all of the other claimed structure and that the distal strand can have an elastic force or tension which is different, i.e. larger or smaller than that of the other strand due to a difference in any size/dimension or amount of elongation. Therefore there is sufficient factual evidence for one to conclude that the contraction force of a stretching member between the base line and longitudinal centerline is stronger/larger than that of a stretching member at the distal edge, see MPEP 2112.01.

Claims 39 and 44: See discussion of claims 36 and 45-47. It is again noted that the claims do not require the cuff to extend along the transverse end of the absorbent core with a

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base line which has a longitudinal direction extending along the end in a direction in which such longitudinal direction is perpendicular to the longitudinal direction of the absorbent structure and the element 142 contacts the wearer's waist in the regions 12 and 14 (It is also noted that member 80 does not have to be at each end of the article), comprises a two layer sheet with a water proof sheet disposed therebetween separately provided on waist margin(s)/flap(s) 22 which include sheet 28 extending in a longitudinal direction beyond 46 and/or 48, has a base line, i.e. adjacent 172, on the waist flap extending in a direction perpendicular to the longitudinal direction, see discussion of claim 45, and extends therefrom along the liquid pervious sheet.

Claim 41: See col. 22, lines 44-46 and 58 in Figure 6 and compare to L and Z of the instant application and see col. 9, lines 18-25, the Figures and col. 14, lines 12-14, i.e. the dimensions, e.g. length and width, of the element 144 are greater than 10 mm in the waist flap.

Claim 43: It is noted that the specific location encompassed by "predetermined location" has not been set forth. See also the discussion of claim 41 and col. 14, line 14-16, i.e. '433 teaches the fixed portion 172 of 144 can terminate at any point along the length of the article including within the margins which have a length of about 13 to 50 mm, i.e. the longitudinal distance between the location of the fixing, i.e. 172, and the end of the waist margin/flap can be 1 mm to 40 mm.

***Claim Rejections - 35 USC § 102/103***

15. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

16. Claims 32-33 and 42 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over St. Louis et al '433.

The disposable absorbent article 10 includes an absorbent structure which is at least 46 or 48, a side flap 20, a standing cuff, at least 144, see, e.g., Figure 6, a base line adjacent 172, and stretching members 68, 68a, see col. 22, lines 7- 46, especially 10-14 and 28-31. The cuff includes a two-layer sheet 176 and a water proof sheet 174. In regard to the effective stretching length, see col. 10, lines 26-53, especially lines 38-39, i.e. the stretching length is an "other size" of the individual strand, and line 40, i.e. to provide a "gradient" ("gradient as defined by the dictionary is "a rate of inclination, slope, an ascending or descending part, incline), i.e. the individual strands may have an ascending or descending gradient of other size, i.e. the effective stretching length of the stretching member between the base line and longitudinal centerline can be shorter than that along the distal edge.

With regard to new line 24 of claim 32, see col. 10, lines 26-50. It is the Examiner's first position that the '433 reference therefore explicitly teaches the stretching stress of distal strand being different, i.e. larger or smaller than, the other strand. In any case, i.e. the Examiner's second position, at the very least '433 teaches all of the other claimed structure and that the distal strand can have an elastic force or tension which is different, i.e. larger or smaller than that of the other strand due to a difference in any size/dimension or amount of elongation. Therefore there is sufficient factual evidence for one to conclude that the distal strand would also inherently, see MPEP 2112.02, or necessarily and inevitably have a stretching stress which is larger than the stretching stress of the other strand.

With regard to new lines 18-23 of claim 32, see discussion supra and col. 18, lines 9-28 (1 N = about 150 g/f), col. 10, lines 26-50, col. 14, lines 12-16, col. 26, lines 6-12. It is the Examiner's first position that the stretching stress as claimed is taught by St. Louis et al, i.e. the structure of 144 when tested similarly to the claimed invention has the same stress with sufficient specificity, see MPEP 2131.03. It is noted however that it is not claimed or disclosed what the size of "a portion" as claimed is, i.e. could be 15 mm by 100 mm or not. In any case, the prior art teaches the general conditions claimed, i.e. stretching stress of base line-side portion larger than that of the distal edge portion. It is noted that the disclosure at page 8, lines 6-11 and page 27, lines 12-18 do not disclose the criticality of the specific stretching stresses. Therefore, since the general conditions of the claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Aller*, 105 USPQ 233.

With regard to new lines 26-27, see col. 5, lines 19-32 and col. 27, lines 49-55 and then see Figures 9A and 9B of the instant application. It is the Examiner's first position that the '433 reference therefore explicitly teaches the claimed shape, as best understood. In any case, i.e. the Examiner's second position, at the very least '433 teaches all of the other the claimed structure in addition to the C-shape span. Therefore there is sufficient factual evidence for one to conclude that the cuff would also inherently, see MPEP 2112.02, or necessarily and inevitably have the same shape in its freely contracted state.

With regard to the new last section of claim 32, see the portions of '433 cited supra, esp. col. 27, lines 51-55, Figure 1, col. 26, lines 19-25, Figure 6 and col. 21, lines 16-25, "generally upright and approximately perpendicular configuration", and the claim language, i.e. "almost vertically", "low", "relatively high", coped with adequately, i.e. absent claiming of a specific



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dimensions, such claim language is considered relative. It is the Examiner's first position that the '433 reference therefore explicitly teaches the capability, function or property set forth in the last section, i.e. when the wearer wears the article, the distal edge of the standing cuff "does not stand vertically" and is brought into contact with "low" pressure at its front and back end-sides, while the distal edge of the standing cuff stands "almost vertically" and is brought into contact with "relatively high" pressure at its laterally central portion so that a side-leakage at a longitudinally central portion of the distal edge of the standing cuff in particular can be "coped with adequately". In any case, i.e. the Examiner's second position, at the very least '433 teaches all of the other the claimed structure and that the central portion of the cuffs is elasticized and raised more than the end portions. Therefore there is sufficient factual evidence for one to conclude that the distal edge would also inherently, see MPEP 2112.02, or necessarily and inevitably have the function, capability or property of the last section.

Claim 33: See col. 22, lines 44-46 and 58 in Figure 6 and compare to L and Z of the instant application.

Claim 42: See discussion of claim 32 *supra*.

### ***Response to Arguments***

17. Applicant's remarks of 5-07 with regard to matters of form have been considered but are either deemed moot in that such matter has not been repeated or is deemed not persuasive for the reasons set forth *supra*.

Applicant's 5-18-04 remarks with regard to the prior art have been considered but are either deemed moot in that such has not been repeated or not persuasive because such are

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narrower in scope than the claim language and/or the teachings of the prior art as specifically discussed supra.

***Conclusion***


18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See col. 13, lines 7-17 of '364.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
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